

Compliance with International Humanitarian Law and Peacebuilding in Post-Conflict Kosovo

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Abstract: Unprecedented violent conflicts occurred worldwide during the 20th century. Millions of lives lost, infrastructure destroyed, and generational effects on post-conflict nations. Meanwhile, international humanitarian law was developed to reduce conflict damage. Government parties to International Humanitarian Law (IHL) conventions have enforceable obligations to implement, promote, and perform their duties, helping to promote their wider recognition and enforcement. During the Kosovo conflict, Serbian military commanders and the police violated international humanitarian law by breaking fundamental precepts. The study of the Kosovo conflict prioritizes criminal accountability and historical documentation over the enduring societal consequences of violations of IHL. There are not many studies that look at how not following IHL affects transitional justice after a conflict. The findings indicate that successful post-conflict reconciliation necessitates enhanced domestic implementation and enforcement of transitional justice frameworks. This includes ensuring accountability for significant violations, fostering victim-centered truth, and institutionalizing IHL education to avert recurrence and facilitate enduring interethnic reconciliation. The article examines the major transgressions of IHL amidst the war in Kosovo (1998–1999), and their effects on post-conflict interethnic reconciliation. Utilizing qualitative, quantitative, and legal-dogmatic methods shows that non-adherence to IHL during armed conflict directly affects transitional justice and severely impacts reconciliation efforts.

Keywords: Geneva Conventions; Humanitarian Law; International Law; Customary Law; Transitional Justice; Reconciliation; Peacebuilding

1. Introduction

International Humanitarian Law (IHL) represents a crucial field of international law that protects the welfare and life of people and societies. IHL is also known by many as the Law of Armed Conflict (LOAC). Beginning in the 20th century, unprecedented worldwide and non-international conflicts occurred, resulting in colossal human suffering and widespread destruction. Technological advances have dramatically increased people's ability to kill people. Over time, IHL, whose primary aim is to diminish the hardship of those ravaged by armed conflicts, has evolved and strengthened, imposing specific obligations on states parties to their treaties to ensure rules are recognized and implemented to the greatest extent possible. Although fighting is inherently destructive, a legal framework that controls war is designed to minimize detrimental effects. IHL is often regarded as the last line of defence.

Former Yugoslavia was a signatory and ratifier of the Geneva Conventions (GC) and Protocols Additional (APGC) to GC. Through their 600 distinct articles, they categorically defined the safeguarding of civilian populations and individuals not engaged in hostilities. Despite global pressure, during the last war in Kosovo (1998/99), the Serbian military, with police and paramilitary units, consistently disregarded IHL. Serbia was consistently informed of the rules of war and the inviolability of non-combatants by international entities such as the Organization for Security and Cooperation in Europe Kosovo-Verification Mission (OSCE KVM) headed in 1998/99 by the United States diplomat William Walker. Nonetheless, principally non-combatants suffered the most during conflicts in the Balkans, including in Kosovo.

It is incomprehensible that in Europe around the late 20th century, wars of extermination, ethnic cleansing, and horrific crimes deeply cut the conscience of the civilized world. Today, a propaganda war continues, with Serbia denying war crimes and downplaying violations of IHL. Such an approach has caused significant harm even during the post-war era, hindering the establishment of veracity as a prerequisite for moving forward in the process of building trust and reconciliation among different ethnic communities in the Balkans. Few have been convicted of war crimes, thousands are still looking for missing relatives, and allegedly rapists walk freely. Most families that survived atrocities were unwilling to engage in a reconciliation process without first passing all stages of transitional justice. This process, accompanied by the establishment of truth regarding events that took place, is difficult when many responsible parties deny what took place. Most stakeholders fail to grasp the significance of this post-war process, particularly in efforts to mediate and facilitate inter-ethnic confidence.

This study explores the fundamental principles of IHL and examines the application of transitional justice mechanisms, including the eventual effects of reconciliation and peacebuilding. This paper highlights regional geopolitical development regions and the frozen/semi-frozen conflict between Serbia and Kosovo, thereby impeding interethnic reconciliation and the establishment of true sustainable peace.

This research indicates that significant violations of IHL during the Kosovo conflict, along with the implementation of insufficient transitional justice mechanisms, have negatively impacted peacebuilding and reconciliation among various ethnic communities. Even though some youth groups from different ethnic backgrounds have had good results, most people remain attached to their beliefs: Kosovo Albanians believe punishing war criminals is necessary for peace, but Kosovo Serbs still deny that they committed crimes against civilians.

The entire paper is structured into chapters and subchapters that address the contemporary understanding of International Humanitarian Law and its relationship with the human rights system, with particular emphasis on the growing integrative tendencies

between the two frameworks. The research critically examines the legal obligations arising from the application of International Humanitarian Law by the parties to the conflict with documented violations committed by those same parties, specifically in the context of Kosovo. In addition, the study incorporates both quantitative and qualitative data, along with their systematic analysis, which has contributed to a more comprehensive understanding of the depth and breadth of the problem under examination.

2. Method

To deal with this painful period in Kosovo's history, methods were utilized to facilitate the display of IHL breaches without bias. The principal literary support for this study was obtained from published archival documents and resources supplied by institutions at both local and international levels. This research is further supported by primary sources obtained through semi-structured interviews with representatives from organizations that assist relatives of individuals who went missing following the recent war in Kosovo. Qualitative data were gathered from representatives of international organizations tasked with safeguarding the rights of the civilian population. A total of 626 people answered questions that comprised quantitative data. A random sample method was used to select respondents from both rural and urban areas, and from different ethnic groups.

3. The Contemporary Understanding of International Humanitarian Law

Is it feasible to halt tragedies caused by war? "How can laws be formulated to regulate a situation that is inherently autonomous from all legal frameworks?" Kant questioned this dilemma. Other writers underline the basic discrepancy between war and law: War, by definition, violates order and is a destructive force, directly opposing law, which tries to protect order and hinders the use of force. Thus, they say war is a forceful substitution for law.¹ Cicero, a Roman statesman and orator, is quoted as saying "laws are silent amidst the clash of arms."

Rousseau, in 1762, articulated in "The Social Contract" that "War is not an encounter amongst individuals, but amongst states, and individuals are enemies merely by chance, not as humans or citizens, but as soldiers, not as members of their nation, yet as its proponents. The objective of war is to annihilate the adversary state; thus, the opposing faction is entitled to eliminate its combatants while they are armed. However, upon surrendering and disarming, these individuals no longer retain their status as enemies or

¹ Jean S. Pictet, *Development and Principles of International Humanitarian Law* (Geneva: M. Nijhoff, 1984), 84.

instruments of the enemy, reverting to humanity, and their lives become inviolable.² Thus, Rousseau earned a distinct tribute of proclaiming the fundamentals of IHL. In doing so, he rejected Hobbes's hypothesis that war is inherent in human nature. He contends that conflict serves solely to subjugate the adversarial state, and we should not extend beyond this. Civilians cannot be held liable for atrocities they did not perpetrate; their lives must be safeguarded and their anguish mitigated, as suffering is analogous on both sides.³ Viewed this way, IHL consists of international legal rules established by treaties or customary practices, whose specific aim is to address humanitarian concerns stemming from military conflicts, regardless of whether they are global or international in nature. These regulations, grounded in humanitarian principles, restrict the rights of conflicting parties to select their methods and means while safeguarding individuals and property that are or may be impacted by the conflict.⁴ In essence, IHL is a set of norms that limits ways and means of battle to safeguard non-combatants.

IHL strives to preserve the lives and integrity of those affected by combative disputes; nevertheless, this protection is contingent upon nations deeming it consistent with the principal aim of the fight, which is to diminish the adversary's military might. The level of protection offered depends on the circumstances of the dispute as well as the classification of the individuals implicated, whether they are civilians or combatants, along with many other legal categorizations.⁵

A typical description of IHL is the body of international norms that guide military conflict. Comprehending this legal domain necessitates an understanding of the concept of armed warfare. This is true from a legal perspective that defines the limits of IHL application, as well as from a philosophical standpoint. The fundamental idea of IHL originates from the necessity of controlling military operations. These restrictions are required because of what we can consider the ethically distinctive nature of war.⁶ Beyond violence, an established system of entitlements and obligations exists. These embody the norms of warfare, the cumulative outcome of reasoning, and humankind's profound sensibilities, and ought to be adhered to by all individuals at all times. Nevertheless, despite the legal framework defining IHL and its applicability, significant gaps have been observed in the necessity of its implementation (in a conflict environment). Frequently, in war situations, uncertainties arise regarding what falls under the scope of IHL and what is covered by the International Human Rights Law (IHRL). There is confusion surrounding what can be

² Rousseau, *The Social Contract* (Tirana: Printing House Reklama, 2020), 83.

³ Rousseau, *The Social Contract*, 28.

⁴ Zejnulla Gruda, *International Protection of Human Rights* (Prishtinë: UBT Printing House, 2010), 261.

⁵ Marco Sassòli, *International Humanitarian Law: Rules, Controversies, and Solutions to Problems Arising in Warfare*, 2nd ed. (Cheltenham, UK: Edward Elgar Publishing, 2024), 1.

⁶ Jonathan Crowe and Kylie Weston-Scheuber, *Principles of International Humanitarian Law* (Cheltenham, UK: Edward Elgar Publishing, 2013), 1.

restricted under the IHRL and whether the protective provisions of these two bodies of law are in conflict.

3.1. Human Rights Law and IHL: Progressing towards enhanced integration

Although there are many historical examples, modern human rights essentially originate from the Renaissance.⁷ Since the 1860s, IHL has evolved in its contemporary form internationally. Human Rights (HR) come from national constitutional law. The IHL has always been a component of international law. Regarding HR, it is first significant to underline the fact that the global HR system was formed mainly following World War II and was first developed mostly free from IHL.

There had been a generally distinct delineation of the law of peace and the law of warfare (ILAC) until the UN was established, with its general restrictions on the use of violence entrenched in the UN Charter (Art. 2, No. 4) and the adoption of regional human rights (HR) catalogues in the United States (1948) and Western Europe (1950). Until then, it was partly believed that treaties pertaining to peace law would automatically (*ipso facto*) terminate or be suspended with the start of a state of war. This perspective holds that while IHL would belong to the domain of war law, HR treaties would fall under the domain of peace law and, hence, would not be applicable to armed conflicts. Thus, HR and IHL would be used in turn to prevent any conflict between the two. This stance has been maintained; in some circumstances, HR is not applicable amid conflict circumstances, and only IHL prevails. A particular justification for this point of view is that HR mostly controls the interaction between governments and their citizens and is meant for times of peace, whereas IHL is meant to safeguard the nationals of enemy nations during hostilities. However, this viewpoint is no longer permissible. Ipsen asserts that the division of international law into peace law and the law of armed conflict is an outdated categorization, given the many connections between these areas of law."⁸

Furthermore, many general HR treaties consider armed conflicts by incorporating clauses that allow for emergencies, including armed conflicts. This implies that, even in times of war, these accords should not lose their legality. Examples include the American Human Rights Convention (ACHR)⁹, ECHR¹⁰, and ICCPR.¹¹

⁷ Bernhard Schäfer, *Zum Verhältnis Menschenrechte und Humanitäres Völkerrecht* (Potsdam: Universitätsverlag Potsdam, 2006), 10–13.

⁸ Knut Ipsen, "Humanitarian Law and Peace Law," (Dordrecht: Martinus Nijhoff Publishers, 1991), 213–24.

⁹ American States Organisation, *American Human Rights Convention* 22 November 1969, art. 27, https://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm (accessed July 10, 2025).

¹⁰ Council of Europe, *European Convention on Human Rights*, 1950, art. 15, https://www.echr.coe.int/documents/convention_eng.pdf (accessed July 14, 2025).

¹¹ United Nations, *International Covenant on Political and Civil Rights*, 1966, p. 171, art. 4, <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights> (accessed July 10, 2025).

These list so-called non-derogable rights from which no variation is permitted, even in times of war. The Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment¹² expressly states that torture cannot be justified in a war or any other public emergency. More recent HR rights accords refer to these and specifically demand adherence to the IHL laws relevant to armed conflicts and set standards for such circumstances. Among these are the African Charter on Welfare and the Rights of the Child¹³, the Convention on the Rights of the Child, and the Optional Protocol for this Convention¹⁴ on the participation of children in warfare. Thus, worldwide agreements for the safeguarding of HR remain relevant even during armed conflicts unless a different objective is precisely stated, especially when applicability is specifically restricted. Thus, all states are required to respect HR (non-derogable in emergency conditions) during armed conflicts independent of treaty obligations.

From the standpoint of the IHL, Article 72 of Protocol I and the second paragraph of Protocol II preamble specifically encourage the wide applicability of HR during armed situations. Former clause makes clear that "the provisions of this section supplement the other relevant provisions of IL concerning the upholding of fundamental HR in an international armed conflict (IAC)." Regarding non-international armed conflicts, Protocol II's preamble says, Recognizing that international agreements relating to HR provide fundamental protection of the person'. Thus, are usually applicable, even in armed combat. Unlike IHL, they are not alternative, but rather cumulative. This applicability holds for non-international armed conflicts (NIAC) as defined by Common Art. 3 of the GC and Article 1, paragraph 1 of Protocol II, as well as for IAC and occupations as delineated in Common Art. 2 of the GC and Art. 1, paragraphs 3 and 4 of Protocol I.¹⁵ The International Court of Justice affirms that the protection provided by human rights conventions persists during armed conflict, except when overridden by derogation provisions, such as Article 4 of the ICCPR.¹⁶ Although they are not solely domestic matters, HR has only recently been safeguarded under international law and is still mostly controlled by national law. More recently, especially in reference to their own state, they have been seen and developed as the subjective rights of people with respect to the state. Thus, the HR-oriented perspective is increasingly shaping IHL.¹⁷

¹² United Nations, *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 1984, p. 85, art. 2, para. 2, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-against-torture-and-other-cruel-inhuman-or-degrading> (accessed July 14, 2025)

¹³ Organization of African Unity, *African Charter on Welfare and the Rights of the Child*, 1990, art. 22, <https://au.int/en/treaties/african-charter-rights-and-welfare-child> (accessed July 14, 2025)

¹⁴ United Nations, *Convention on the Rights of the Child*, 1989, p. 3, art. 38, <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child> (accessed July 15, 2025).

¹⁵ ICRC, *Protocol Additional to the GC Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, 1977, art. 1, paras. 3–4, <https://ihl-databases.icrc.org/en/ihl-treaties/api-1977/article-1> (accessed July 15, 2025).

¹⁶ Schäfer, *Zum Verhältnis Menschenrechte und Humanitäres Völkerrecht* 14–17.

¹⁷ Marco Sassòli, Antoine A. Bouvier, and Anne Quintin, *How Does Law Protect in War?* 3rd ed. (Geneva: ICRC, 2011), 351. ISBN 978-2-88145-260-9.

3.2. Fundamental principles of IHL and their application: Kosovo context

The legal basis for controlling conduct during warfare is formed in accordance with the following key principles: proportionality, distinction, and precaution. Distinction differentiates non-combatant citizens from those involved in combat, and public objectives from military targets. The necessity principle places restrictions on military activities, and bans against causing unnecessary pain are examples of such principles. These concepts are not derived from a distinct body of IL but rather are founded on general principles of law, treaties, and conventions.¹⁸

The Geneva Convention and other international treaties have embodied these values. Jean Pictet wrote that regulations included in IHL treaties are based on a set of principles derived from customary law and serve as inspiration for the full substance of provisions documented in the Conventions.

3.3. Principle of distinction

The distinction, as a principle, aims to protect individuals against assault and is pertinent to both IC and NIC conflicts. Actions have to be directed at military targets; no targeting of civilians is permitted. If the two are indistinguishable, this type of attack is known as indiscriminate assault. Attacks devoid of discrimination are illegal, and may qualify as war crimes. Should doubt whether or not a certain person qualifies as a civilian, that person will be judged to be so. IHL guards all 'civilian objects,' that is, an object assessed as not having a military purpose. Should doubt arise over whether an object usually regarded as civilian in nature is indeed a military aim, it will be assumed to be civilian. Afforded special protection is a civilian asset, including schools, hospitals, spiritual and cultural landmarks, and things indispensable to the existence of citizens like drinking water structure. If used in a way that qualifies as hostile, a civilian object may lose protection under several circumstances.¹⁹

In the 1998-1999 Kosovo war, Serbian military, paramilitary, and police perpetrated severe violations, including crimes against humanity. These forces are engaged in widespread killing, execution, massacres, sexual violence, and torture. In an effort to conceal physical evidence, bodies were buried, transported from one location to another, sometimes discarded into wells, ravines, and lakes, or destroyed through burning and other methods. Moreover, during the conflict, Serbian forces killed, executed, or massacred approximately 13,500 Kosovo Albanians, of whom 90% were unarmed civilians. Nearly 20,000 Kosovo Albanian women are reported to be raped. Reports also indicate the abduction of more than 4,000 Kosovo Albanians, some of which were later

¹⁸ Sassòli, *International Humanitarian Law: Rules*, 53.

¹⁹ Diakonia IHL Centre, *Understanding IHL- An Introduction to the Law of Armed Conflict*, 1st ed. (2022), 32–33, https://apidiakoniase.cdn.triggerfish.cloud/uploads/sites/2/2022/02/Understanding_IHL-booklet.pdf (accessed July 16, 2025).

found in mass graves in Serbia and Kosovo. The fate of approximately 1,500 people remains unknown.²⁰

An example is April 27, 1999, when the Serbian military, paramilitary forces, and reportedly local Kosovo Serb men surrounded an area known as Reka and Keqe near the town of Gjakova. In a planned operation, the house-to-house rounding up of males aged 15-60 began in the morning. In total, 377 Kosovo Albanian males, including 36 under the age of 18 years, were killed. Thousands were forcibly displaced into Albania.²¹ According to data collected after the war in Kosovo, 1,271 children were killed at various locations across the country. Of these, 245 were under the age of five years.²²

From March 1998 to June 1999, Serbian forces, often using heavy artillery and/or battle tanks, completely or partially destroyed over 200,000 homes, factories, schools, libraries, historic, cultural, and religious sites, many looted and burned. Approximately 700,000 Kosovo Albanians were forcibly displaced to Albania, 210,000 to Macedonia (now North Macedonia), 60,000 to Montenegro, 20,000 to Bosnia and Herzegovina, and 140,000 left elsewhere the globe.²³ According to the HRW in the spring of 1999, over 850,000 Kosovo Albanians were forcibly expelled by Serbian forces, over half of the Kosovo population. The distinction between civilian combatants was not applied, and major transgressions of GC were committed.²⁴

Article 3, applicable to all four GC, stipulates that persons not actively participating in hostilities, including those disarmed, incapacitated, injured, captured, or for other reasons, need to be handled humanely without prejudices grounded on religion, gender, birth race, affluence, or any comparable criterion. Violence encompassing torture, mutilation, or inhumane treatment was explicitly prohibited. Hostage-taking, incarceration, and executions conducted without legitimate trial by an established court lacking judicial safeguards are prohibited.²⁵ Acts or threats of violence aimed principally at instilling panic in civilian populations are unequivocally illegal.²⁶ However, civilian populations and individuals must not be targeted.

²⁰ Nusret Pllana, *Terrori i Serbisë pushtuese mbi shqiptarët/1844–1999*, (Prishtinë: Arkivi Shtetëror i Kosovës, 2013), 19.

²¹ Serbeze Haxhijaj and Milica Stojanovic, “Balkan Transitional Justice – Meja Massacre,” 2020, <https://balkaninsight.com/sq/2020/04/27/masakra-e-mejes-provat-tregojne-se-rol-i-perfshirjes-se-oficereve-serbe-ne-masaker-u-injorua/> (accessed July 16, 2025).

²² Osmani, *Serbia's Crimes Against Children in Kosova*, 45.

²³ Pllana, *Terrori i Serbisë pushtuese mbi shqiptarët/1844–1999*, 19.

²⁴ Human Rights Watch, *Nën pushtetin e urdhrave* (Tiranë: Human Rights Watch, 2002), 142, <https://www.hrw.org/reports/2001/kosovo/HRW2.pdf> (accessed July 17, 2025).

²⁵ ICRC, *Geneva Conventions: Common Art. 3* (Geneva: ICRC, 1949), <https://ihl-databases.icrc.org/en/ihl-treaties/gc-1949-1/article-3> (accessed July 17, 2025).

²⁶ ICRC, *Protocol Additional to the Geneva Conventions, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)*, - Art. 13 (Geneva: ICRC, 1977), <https://ihl-databases.icrc.org/en/ihl-treaties/apii-1977/article-13> (accessed July 17, 2025).

3.4 Principle of proportionality

One of the stated constraints regarding military action is the concept of 'proportionality.' This prohibits actions from imparting civilians or destroying their property if disproportionate to the war-like benefit of the attack. Proportionality is incorporated by the General Council, particularly in AP I.²⁷ This limitation is a key element of both IAC and NIAC and is also considered a customary law component.

A military chain of command in warfare strategy is required to analyze the balance between military benefits and potential losses to civilians. Challenges are associated with the concept of proportionality, particularly regarding its pragmatic significance. It arguably introduces an element of 'subjectivity' for military commanders, with military goals, whose primary task is victory.

To return again to the Kosovo town of Gjakova, according to data from International Crisis Group (ICG) and the OSCE, 1,586 houses, 614 commercial premises and about 200 cultural heritage sites were destroyed. During the Serbian offensive, 870 non-combatants were killed.²⁸ According to Office for Democratic Institution and Human Rights (ODIHR) these acts were not random rather "a strategy well-rehearsed, and brutally implemented."²⁹ It is difficult to assess these acts as anything other than flagrant violations of 'proportionality,' particularly noting the majority of armed clashes took place in rural areas of this municipality, not the urban center.

3.5. Principle of precaution

Precautions are obligatory to safeguard civilian welfare by reducing threats to life or property during combat operations in the proximity of residential populations.³⁰ Combatant forces must judiciously choose their weapons and means of warfare to mitigate damages to the population.³¹ Prior to initiating an offensive, military personnel must alert civilians of impending activities to prevent civilian damage or loss of life. This duty is applicable when circumstances allow; it is not obligatory if the attribute of surprise is paramount for operational results or for safeguarding the armed forces (the Lieber

²⁷ ICRC, *Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I)*, Article 51(5)(b).

²⁸ Osmani, *Serbia's Crimes Against Children in Kosova*, 283.

²⁹ OSCE Office for Democratic Institutions and Human Rights (ODIHR), *Kosovo/Kosova As Seen, As Told* (Organization for Security and Co-operation in Europe, 1999), 11, <https://www.osce.org/files/f/documents/d/d/17772.pdf> (accessed July 17, 2025).

³⁰ ICRC, *Protocol Additional to the Geneva Conventions and Protection of Victims of International Armed Conflicts*, Art. 57 and UNESCO, *Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict*, <https://www.unesco.org/en/legal-affairs/second-protocol-hague-convention-1954> (accessed July 17, 2025).

³¹ ICRC, *Protocol I*, 8 June 1977, art. 57, 2.a.

Code).³² When protected entities, such as hospitals, are utilized for warfare, an opposing force may target them following a warning that has been disregarded by the opposition.³³ Defensive armies must refrain from positioning military sites in or near civilian areas and must implement measures to safeguard citizens from military activities, particularly the utilization of civilians as shields.³⁴

Violations of this principle have been documented throughout Kosovo during the last war. One such instance of violation occurred in Mitrovica in April 1999 in the Ilirida area of the city, the largest Kosovo Albanian zone. The Serbian military imposed civilians to leave their homes under the pretext of clearing the area of members of the Kosovo Liberation Army (KLA). Approximately 35,000 people were forced to march towards the Albanian border. Many who remained in the zone were reportedly executed by the Serbian forces. Survivors testified to the names of those killed, as well as widespread looting by Serbian forces, who loaded transport vehicles with valuable items belonging to Kosovo Albanian citizens. The true purpose of forcing the civilian population to leave was the looting of property and the ethnic cleansing of the area.³⁵ In addition, unlike many other areas, no houses were burned, arguably indicating that this was for the purpose of later re-population by the ethnic Serb people.

4. Violations of the Principles of IHL and Peace Building

Breaches of the IHL and post-war peacebuilding initiatives have a complex relationship. Communities with mistrust and hatred resulting from IHL violations can impede reconciliation, reconstruction, and sustainable peacebuilding. IHL violations undermine social trust both inside and between communities, especially in crimes such as rape, torture, massacres, and cultural destruction. Generational anguish and animosity make post-war healing difficult.

Trust is a fundamental component of peacebuilding; it is considerably more difficult to initiate communication between once-warring groups when crimes have been committed. When IHL is broken, there is a great desire for justice, which is satisfied by domestic courts of law or international judiciatures, such as the ICTY. The indictments included five senior leaders from former Yugoslavia, and Serbia represented a minimal

³² ICRC, *Instructions for the Government of Armies of the United States in the Field (Lieber Code)*, 1863, Art. 19, IHL Databases, <https://ihl-databases.icrc.org/en/ihl-treaties/liebercode-1863/article-19?activeTab=> (accessed July 17, 2025).

³³ ICRC, *Hague Regulations concerning the Laws and Customs of War on Land*, annexed to the 1907 Hague Convention IV, Art. 26, IHL Databases, <https://ihl-databases.icrc.org/en/ihl-treaties/hague-regulations-1907/article-26> (accessed July 17, 2025).

³⁴ ICRC, *Geneva Convention (III) to the Treatment of Prisoners of War*, Art. 23, IHL Databases, <https://ihl-databases.icrc.org/en/ihl-treaties/gc-iii-1949/article-23> (accessed July 17, 2025).

³⁵ Xhyla Haziri, Director of the Missing Persons Family Association in Mitrovica/Kosovo, interview by author, Mitrovica, July 18, 2025.

victory for justice according to victims of crimes committed. These individuals were held accountable based on the hierarchical responsibility for the perpetration of such crimes. Many others face accountability for their actions. The ICTY failed to prosecute all those responsible, constituting one of the tribunal's greatest shortcomings.³⁶ Thus, transitional justice failed to definitively identify the criminals and the victims. This action is considered as the first move towards forgiveness and peace-making, since it prepares the ground for the establishment of measures for making sure that the hostilities do not occur again.³⁷ The representatives of the United Nations Mission appeared to be focused on the recent war and the international administration in Kosovo, as they clearly indicated that peace and stability were the top priorities, while holding criminals accountable was a lower priority. The international armed forces stationed in the area at that time also adopted a similar stance.³⁸

There is a range of political realists who think that the least invasive method of dealing with the problem might be the most efficient in creating a peaceful situation that lasts. This, however, would come through amnesty, which would in turn result in political stability and thus the prevention of any future outbreaks of violence and international humanitarian law infringements.³⁹

In post-conflict societies, security usually requires the most attention, and sometimes justice and peacebuilding mechanisms are overlooked, but these three components should not be treated as independent ones; instead, they should be considered in a linear and interdependent relationship with one another. By enhancing one component, the others could be made easier, thus drawing a cumulative, chain-reaction effect.⁴⁰

Justice is not just a legal but a necessary healing element. It recognizes the victim's suffering and dissolves an impuned culture. Ignoring war crimes arguably prolongs the cycles of violence and retaliation, compromising long-term peace. Efforts at peacebuilding can call for infrastructure repairs, restitution, and restoration of displaced people to their homes. Memory of IHL abuse may complicate physical and psychological rehabilitation, extending post-war recovery.⁴¹ Moreover, the notions of victimization and duty bearers have been transformed into dynamic categories, acknowledging that

³⁶ Orhan Çeku, University Professor, interview by author, Pristina, July 24, 2025.

³⁷ Elias O. Opongo, "Transitional justice discourse in post-conflict societies in Africa," *Journal of the British Academy*, volume 9, (Supplementary issue 2, 2021): pg.3.

<https://www.thebritishacademy.ac.uk/documents/3312/JBA-9s2-00-Full-issue.pdf>

³⁸ Djeyhoun Ostowar, *Transitional Justice in Peacebuilding*, (Routledge: 2021), 68. ISBN: 978-1-003-02808-6

³⁹ Hugo, Rojas., Miriam, Shaftoe., *Human Rights and Transitional Justice in Chile*, (Palgrave: 2022), 11-12. ISBN: 978-3-030-81182-2

⁴⁰ Nasia Hadjigeorgiou, *Protecting Human Rights and Building Peace in Post-violence Societies*, (HART Publishing: 2020), 27. ISBN: 978-1-50992-344-1

⁴¹ OHCHR, *About Transitional Justice and Human Rights*, <https://www.ohchr.org/en/transitional-justice/about-transitional-justice-and-human-rights> (accessed July 21, 2025).

victimization does not only refer to the physical or material harm done to people but also to the moral and psychological harm done to communities.⁴²

Widespread IHL violations can compromise the legitimacy of those involved in peacebuilding initiatives if they are part of a conflict or are suspected/perceived war crime offenders. If there is no credible attempt to resolve IHL violations, the international community may withdraw support for rehabilitation or peacebuilding projects. Peace agreements lacking responsibility for war crimes may not receive the broad international support required for their application. To handle IHL violations, post-conflict nations frequently look to transitional justice systems including institutional reforms, truth commissions, and restitution schemes. These give victims a forum to be heard, record past injustices, and aid healing processes, which are essential to peacebuilding. Efforts at peacebuilding must go beyond political agreement. Healing divisions brought about by violations of IHL usually require psychological support, reconciliation initiatives, and memory projects such as memorials for victims. Peace remains brittle without addressing these intangibles, but important implications.⁴³

Sexual violence against civilians was prevalent during the Kosovo conflict period. The inability to prosecute offenders, institutional silence, victim stigmatization, and denial of these crimes, particularly by Serbian individuals and institutions, deepened survivors' suffering and promoted impunity. Failure to confront such abuse undermines faith in justice, hinders survivors' rehabilitation and empowerment, and threatens their permanent peace. Only by acknowledging the truth, seeking justice, and including survivors in peacebuilding processes can dignity, restitution, and non-recurrence be achieved.⁴⁴

Despite numerous efforts and the application of transitional justice components in Kosovo, the results achieved in peacebuilding and fostering trust between the ethnic majority of Kosovo Albanians and the minority Kosovo Serb community remain limited.⁴⁵ As a result of IHL violations, even 25 years after the last war in Kosovo, there are still significant barriers to the interaction and integration of certain ethnic communities.⁴⁶ Better outcomes were observed in Kosovo, where destruction was minimal and human losses were relatively low.⁴⁷ However, in Kosovo, where war costs human lives and causes

⁴² Tim Murithi, Stephan Parmentier, Natascha Zupan, *Effective implementation of transitional justice mechanisms: Challenges and Prospects in Africa and Europe*, (Deutsche Gesellschaft für Internationale Zusammenarbeit: 2023), 9.

⁴³ German Development Institute, *What Do We Know about Post-Conflict Transitional Justice?* [online], 2019, https://www.idos-research.de/fileadmin/migratedNewsAssets/Files/BP_3.2019.pdf (accessed July 21, 2025).

⁴⁴ Mehmet Musaj, General Coordinator of "The Kosova Rehabilitation Centre for Torture Victims," interview by author, Pristina, July 23, 2025.

⁴⁵ Besnik Uka, Director of NGO REC (Reconciliation Empowering Communities), interview by author, Mitrovica, July 18, 2025.

⁴⁶ Remzije Zekolli, Head of the Vushtrri Municipal Sector on Human Rights and Gender Equality, interview by author, Vushtrri, July 18, 2025.

⁴⁷ Zekolli, interview, July 18, 2025.

significant damage to infrastructure, the process of building trust, peace, and even repatriation of refugees and internally displaced people is accompanied by substantial complications. Specific examples include the northern, western, and central regions of Kosovo. In these areas, the fate of over thousand missing people during the war remains unknown.⁴⁸ Moreover, the loss of life, predominantly men, had a severe economic impact on families, as the primary wage earners were often among those killed or missing. This also affected women's property rights, particularly those who lost their husbands during the war (e.g., the Berisha case, 1999).⁴⁹

In the absence of substantial progress in building trust, some ethnic communities continue to live near each other, with the potential for conflict. Serbia also has significantly instrumentalized the Kosovo Serb minority. Individuals who are accountable for war crimes play a significant role in Serbia's official institutions.⁵⁰ Despite irrefutable evidence, Serbian authorities and a large swathe of the Serb population deny war crimes. This 'deny' culture extends to Serbian schools where the taught discourse is 'Albanian terrorists' were the aggressors.⁵¹ Another type of victim denial occurs when offenders blame victims, taking on the role of the victim. This creates national unity, marked by a strong sense of nationalism.⁵² From a legal standpoint, the identification of victim status is quite evident; nevertheless, it is very intricate and hard to apply. To put it simply, war victims are people commonly associated with the breaches of international humanitarian law through either individual or community means. The violations involved here range from and include, the infliction of physical harm, and the infliction of psychological and emotional suffering to the destruction of the economic basis of the community.⁵³

Moreover, strong instrumentalization of the Serb ethnic community in Kosovo by the Serbian authorities has been observed, particularly in relation to the boycott of participation in transitional justice mechanisms. Frequently, the influence is direct and immediate whenever joint actions are perceived as having the potential to yield positive outcomes.⁵⁴ Assisting people to co-exist and accept and deal with the past can be accomplished in two ways: by making peace that lasts and by assisting with transitions.

⁴⁸ Uka, Interview, July 18, 2025.

⁴⁹ Zekolli, interview, July 18, 2025.

⁵⁰ Labinot Hajdari, Director of the Kosovo Centre for Diplomacy, interview by author, Pristina, July 24, 2025.

⁵¹ M. Šuica, A. Radaković, and S. Rudić, "Where and How Do Pupils in Serbia Learn about the 1990s Yugoslav Wars?" (Cham: Palgrave Macmillan, 2020), 127–54, https://link.springer.com/chapter/10.1007/978-3-030-38121-9_8

⁵² Sabrina P. Ramet, "The Denial Syndrome and Its Consequences: Serbian Political Culture since 2000," (March 2007): 41–58, <https://www.sciencedirect.com/science/article/abs/pii/S0967067X06000559> (accessed July 22, 2025).

⁵³ Jessie Barton-Hronešová, Memory Politics and Transitional Justice, (Oxford Department of International Development: 2020), 5. ISBN 978-3-030-51622-2

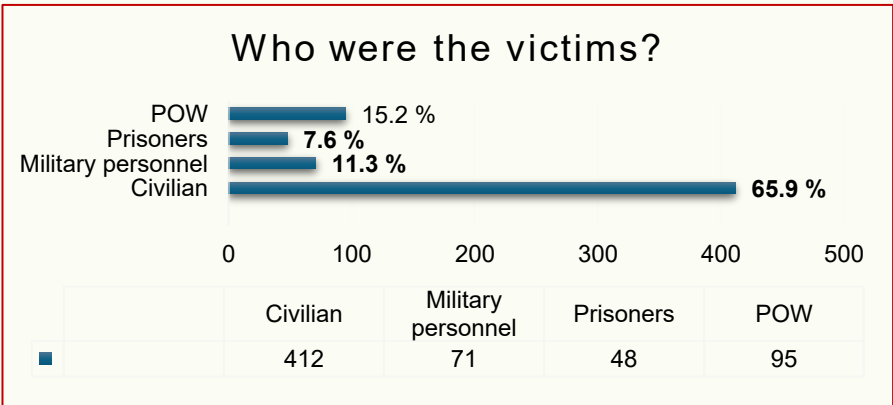
⁵⁴ Latif Mehmeti, Director of "Përkorë" Family Association of Missing Persons, interview by author, Podujevë, Kosovo, July 25, 2025.

This process, like any other action that contributes to the construction of peace, needs to be supported in a manner that is cognizant of context.⁵⁵

5. Empirical Consequences of International Humanitarian Law Violations in Post-Conflict

The research encompasses 626 respondents from six different municipalities in Kosovo (Prishtina, Fushë Kosovë, Vushtrri, Skenderaj, and South and North Mitrovica). Eight experts with extensive knowledge of IHL violations, transitional justice, and peacebuilding were interviewed. Survey respondents were classified into age categories: 18–30, 31–40, 41–50, and over 50 years. Of the respondents, 65.1% were male and 34.9% were female. The respondents were unanimous in their views on IHL violations during the war, with 100% affirming occurrences of serious breaches. Approximately 70% of respondents believed that victims of the last war were primarily civilians and non-combatants. About 23% also considered prisoners of war and detainees as victims, noting that many of them remained listed as missing. This finding is corroborated by qualitative data.⁵⁶

Chart 1: The victims of 1998-1999 War in Kosovo



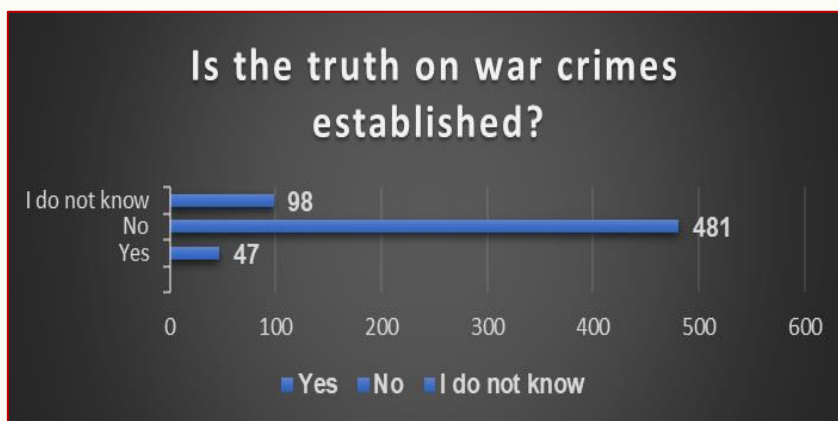
The majority of respondents (436/69.64%) believed that the necessities of the families of victims and survivors were not adequately addressed by institutions. This extends beyond financial assistance and includes psychosocial support according to qualitative data collected via interviews. A significant number of respondents (481/77%) believed that the truth regarding offenses perpetrated against the domestic citizenry in Kosovo has not

⁵⁵ Avni H. Alidemaj and Alban Maliqi, “Enhancing Minority Rights in Kosovo and the Balkans: Legal Avenues to Inclusion,” *Hasanuddin Law Review* 11, no. 1 (2025): 82–105, <https://doi.org/10.20956/halrev.v11i1.5911>

⁵⁶ Behxhet Shala, Executive Director of the Council for the Defense of Human Rights and Freedoms, interview by author, Prishtina, July 28, 2025.

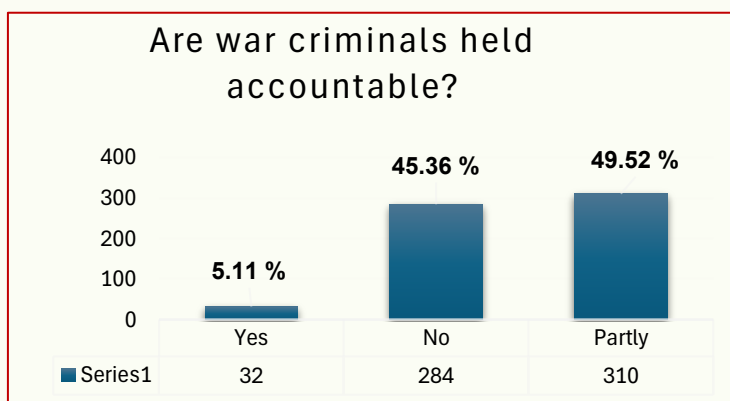
been sufficiently revealed. The truthfulness of war crimes in Kosovo remains fragmented and is often influenced by ethnic affiliations.⁵⁷

Chart 2: The truth on war crimes



Of the respondents 94% (594) believe that the perpetrators of war crimes had either not been prosecuted at all or only partially. This assessment was corroborated by both qualitative data and statistics from international and domestic courts. To date, the limited number of convictions has primarily focused on individuals within chains of command, with significantly less attention given to the direct perpetrators of crimes.⁵⁸

Chart 3: Accountability for war crimes?



Additionally, 93% of respondents stated that even 26 years after the war, no official apology had been extended for the perpetration of war crimes committed against the Kosovo Albanian civilians. Qualitative data revealed that, in some instances, local village

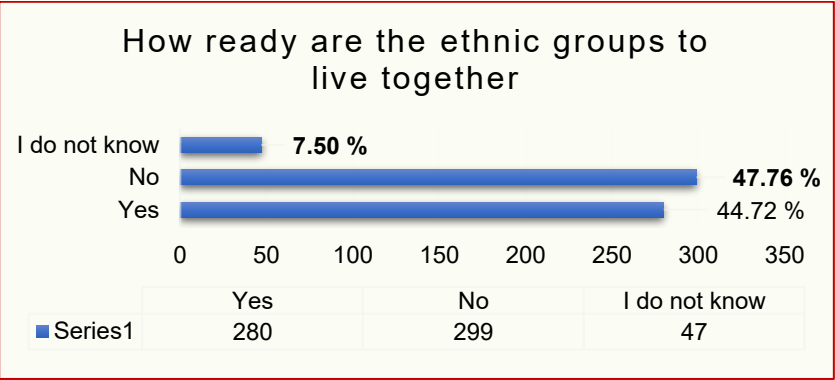
⁵⁷ Bekim Blakaj, "Humanitarian Law Center Kosovo-Executive Director," interview by author, Prishtina, July 31, 2025.

⁵⁸ Blakaj, interview, July 31, 2025.

leaders and, occasionally, individual Serbian clerics have offered personal apologies for the crimes committed.⁵⁹

One of the research objectives was to assess the willingness of ethnic communities to co-exist, particularly in the Albanian community. Quantitative data, corroborated by qualitative findings, revealed that 44% of the respondents were willing to co-exist with other ethnic communities. In contrast, 47% are categorically opposed until the truth about war crimes is established, perpetrators are prosecuted, and Serbia issues an official apology and reparations for the damages caused. Among those who declared a willingness to coexist, 45% were in the 18–40 age group, born after the last war in Kosovo or with limited recollections of its consequences.

Chart 4: Extent of ethnic communities willing to live and work together



A noteworthy finding concerns respondents' perceptions regarding the potential recurrence of a conflict, similar to that of 1998–1999. The majority (87%) stated that there was a high likelihood of renewed clashes, primarily due to the absence of a formal peace agreement with Serbia. However, this perception is contradicted by qualitative data, which largely dismiss renewed conflict, citing the continued presence of NATO forces in Kosovo as a key stabilizing factor.

This study enhances academic discourse on post-conflict justice, collective memory, and security perceptions by empirically demonstrating the enduring impact of unresolved responsibility and fragmented truth-telling on individual and collective anxiety in post-conflict Kosovo. The research clarifies the genesis and propagation of justice deficits across generations by synthesizing extensive quantitative data on fear perceptions and co-existence attitudes with in-depth qualitative interviews. The results indicate that fear is not only a lasting psychological effect of conflict but also a socially constructed perception impacted by the lack of prosecutions, official recognition, and apologies, thereby establishing a direct link between transitional justice outcomes and current

⁵⁹ Xhavit Mehmeti, Director of NGO “FODEM,” interview by author, Vushtrri, July 29, 2025.

security perceptions. The mixed-methods approach significantly deepens the comprehension of conflict and transitional justice by illustrating that statistical patterns of fear gain enhanced explanatory depth when evaluated alongside lived experiences and expert perspectives, thereby positioning Kosovo as a critical case for exploring the enduring governance implications of incomplete post-conflict justice mechanisms.

6. Conclusion

Although public debate continues to focus on war crime cases institutionally, nationally, and internationally, this appears to be a priority in words only. An ongoing challenge is inadequate regional cooperation in finding witnesses and suspects. Additionally, efforts by civil society to bridge ethnic communities, especially in areas heavily affected by war, have been continuously undermined by political circles in Serbia, which have intimidated, blackmailed, or plainly discouraged Kosovo Serbs from participating in the process of integration or building trust through transitional justice mechanisms.

Overall, the study reveals that the continuous emotions of fear, insecurity, and only co-existence among the different ethnic groups in post-war Kosovo are not simply the war's legacy but are deeply rooted in the deficits of accountability, truth-telling, and formal acknowledgment of past atrocities. To add, the unfinished transitional justice processes keep on affecting the collective memory and present security perceptions, thus deepening the social divisions and making it more difficult to realize peace that lasts. The research provides a complex understanding of the ways in which justice deficiencies show up as the enduring issues of society and governance. These findings open new avenues for the study of post-conflict and transitional justice by emphasizing the role of the justice mechanisms in building and maintaining peace and by providing empirical insights that are applicable to other societies that are still suffering from the consequences of unresolved conflict.

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